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No. 85-1969

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1985

THE CITY OF OAKLAND,
a charter city and municipal
corporation,

Petitioner,

vs.

THE OAKLAND RAIDERS, et al.,

Respondents.

BRIEF OF RESPONDENT LOS ANGELES MEMORIAL COLISEUM COMMISSION IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA, FIRST APPELLATE DISTRICT

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QUESTION PRESENTED

Does the imposition of "appropriate limitations" by the California courts on the exercise of California's statutory power of eminent domain, by a subordinate political entity, warrant review by this Court, where the "appropriate limitations" are based on findings of the California courts that California's local interest does not outweigh the burden that would be imposed on interstate commerce?

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Respondent Los Angeles Memorial Coliseum Commission respectfully opposes the Petition for a Writ of Certiorari ("Petition") filed herein.

STATEMENT OF THE CASE

This action was commenced in February, 1980, by the petitioner herein, the City of Oakland, California (City) under the provisions of the California Eminent Domain Law (California Code of Civil Procedure Sections 1230.010 et seq.). Through the use of California's Eminent Domain law, the City attempted to block the move, from the City of Oakland to the City of Los Angeles, of a football team which was then known as the "Oakland Raiders" which was to play in this respondent's Coliseum. (See City of Oakland v. Oakland Raiders 32 Cal.3d 60, 63, 183 Cal.Rptr. 673, 675 (1982).)

In June, 1980, the action was dismissed by the trial court's entry of summary judgment. The trial court's decision was based on its finding a lack of a "public use", which is a necessary component for any eminent domain action. The dismissal was affirmed on appeal to the California Court of Appeal, although the affirmance was on the different ground that intangibles not connected with real property are not subject to condemnation under California law.

The California Supreme Court granted review and held that intangible property could be the subject of an eminent domain action under California law. (City of

Oakland v. Oakland Raiders, supra, 32 Cal.3d at 68, 183 Cal.Rptr. at 678.)

As to the remaining issues in this condemnation action, the Court simply stated that the "City and the Raiders should be afforded a full opportunity before a trial court to present the 'facts and circumstances' of their respective sides during a trial on the merits." (32 Cal.3d at 76, 183 Cal.Rptr. at 683.)

The California Supreme Court also noted that: ". . . the facts and circumstances developed at trial may be of substantial assistance in the formulation of any appropriate limitations on the exercise of such power (eminent domain)." (32 Cal.3d

at 75, 183 Cal.Rptr. at 682.) (Emphasis added.)

After remand from the California Supreme Court but before trial, and following the decision in its favor in Los Angeles Memorial Coliseum Commission v. National Football League, 726 F.2d 1381 (9th Cir.), cert. denied, 105 S.Ct. 397 (1984), this respondent, Los Angeles Memorial Coliseum Commission, entered this case pursuant to the provisions of California Code of Civil Procedure Section 1250.230.

The "facts and circumstances" of this case were presented during a seven-week trial during May and June of 1983, in Monterey County,

California. Twenty-nine (29) witnesses testified, there were more than 200 exhibits, in addition to masses of material of which the court took judicial notice, and a transcript that is 5724 pages long. The trial court's eventual findings consist of 72 pages of text and held, on many independent grounds, that the City could not acquire the property under California's Eminent Domain law.

On July 22, 1983, the trial court filed its "Intended Decision" (3 C.T. 1436-1479) ordering the dismissal of the action. The Judgment was entered on August 5, 1983. Thereafter, a series of what were termed by the court below as "procedural maneuvers" occurred. (Pet. App.2a.)

Once again, however, on July 16, 1984, after additional proceedings, the trial court issued a decision holding that the City could not acquire the Raiders. The trial court's "Tentative Decision" of July 16, 1984 (C.T. 288-312), was adopted and incorporated in its entirety in the "Statement of Decision" (C.T. 326-328) which was filed on August 10, 1984. Among the findings of the trial court supporting its conclusion that the City could not condemn the Raiders was the finding that there was "no reasonable probability that the franchise would ever be put to the stated public use". (C.T. 299.) The trial court found essentially that the City would

never be able to accomplish its objective because of barriers imposed by the Constitution and By-Laws of the National Football League (C.T. 295); the federal court injunction issued in the Los Angeles Memorial Coliseum v. National Football League, supra, litigation (C.T. 296); and barriers imposed by the California Eminent Domain law (C.T. 296).

The trial court also found that "[t]he City willfully failed to follow the procedure and give notice required by law", (C.T. 305) and that "[t]he action was filed for the arbitrary and capricious purpose of restraining the Raiders after bad faith negotiations by the Coliseum Commission had failed

to consummate a new lease." (C.T. 305.) The trial court further found that "[s]trong proof of the misuse of the eminent domain process also rests in the lack of evidence before the governing body when the resolution was adopted." (C.T. 305.) Based on these findings the trial court found that the adoption of the City's resolution, which authorized the condemnation action, had been "influenced by (a) gross abuse of discretion." (C.T. 306.)

The trial court additionally found that the "public interest and necessity", necessary components to a condemnation action under California law, "do not require the acquisition of the Raiders" (C.T. 306). A number

of additional grounds to defeat the taking were also found by the trial court in addition to those mentioned in the decision of the court below.

The California Court of Appeal filed its decision affirming the trial court's dismissal of the action on November 15, 1985. The City petitioned the California Supreme Court for review, which was denied on February 28, 1986. This petition follows.

REASONS FOR DENYING THE WRIT

SUMMARY OF ARGUMENT

The decision of the California Court of Appeal in this case is

consistent with the applicable precedent of this Court and concerns only the petitioner's "parochial" interests. (Pet. App. 6a.) By deciding that California's local interest was not sufficient to outweigh the burden that the petitioner's "parochial meddling with the National economy" would cause (Pet. App. 6a-7a), the court below simply placed an appropriate limitation on the exercise of California's statutory power of eminent domain by a subordinate political entity.

ARGUMENT

THIS CASE RAISES NO ISSUE OF FEDERAL STATUTORY OR CONSTITUTIONAL LAW WHICH THIS COURT NEED DECIDE.

There can be no doubt that the commerce clause imposes a limitation upon the power of the states without the need for implementing legislation by Congress. Great Atlantic & Pac. Tea Co., Inc. v. Cottrell, 424 U.S. 366, 370-371 (1976); Freeman v. Hewitt, 329 U.S. 249, 252 (1946).

The petitioner's position is directly contrary to this settled law. The petitioner argues:

> "The City's power to acquire the Raider's NFL franchise by eminent domain should be affirmed in the absence of any inhibiting action by Congress pursuant to the Commerce Clause." (Pet. p.8.)

The court below applied the correct standard to its review of the Commerce clause issue, declining petitioner's suggestion that it depart from precedent. (Pet. App. 3a.)

The court below commenced its review of the issue with the "facts and circumstances" that were developed during the trial and found by the trial court. That analysis was entirely appropriate because what constitutes an impermissible burden on interstate commerce is always a question of fact. See e.g., Raymond Motor Transp., Inc. v. Rice, 434 U.S.

429, 447 (1978). The court below carefully considered the facts in light of a relevant recent California Supreme Court case, Partee v. San Diego Chargers Football Co., 34 Cal.3d 378, 194 Cal.Rptr. 367 (1983), cert. denied, 80 L.Ed.2d 153 (1984) (Pet. App. 6a). Based upon its review of the facts, the court below found that the "proposed action would more than indirectly or incidentally regulate interstate commerce." (Pet. App. 6a.) The court further found that "[t]his is the precise brand of parochial meddling with the national economy that the commerce clause was designed to prohibit." (Pet. App. 6a-7a.) Based on those findings, the court concluded that:

> "the burden that would be imposed on interstate commerce outweighs the local interest in exercising statutory eminent domain authority over the Raiders franchise." (Pet. App. 8a.)

So in essence, the court below correctly applied the relevant precedent of this Court (see page 13 supra) to place an "appropriate limitation" on the petitioners exercise of California's statutory power of eminent domain.

Contrary to the petitioner's urging (Pet. p. 8), the petitioner does not possess an "inherent" right to use the power of eminent domain but may exercise it only when expressly authorized to do so by law. (City of Oakland v. Oakland Raiders, supra, 32 Cal.3d 64, 183 Cal.Rptr. at 676.)

The petitioner further attempts to avoid judicial review of its actions by arguing that it is a mere "market participant." (Pet. pp. 11-14.) This argument, of course, has no basis in fact or law. As the court below noted: "[h]ere the City does not even cross the threshold of the marketplace except by first exercising what has been characterized as a soverign's 'most awsome grant of power' - eminent domain." (Pet. App. 4a.) Accordingly, this argument is without merit.

The City's final argument (Pet. pp. 14-18), appears to be an attempt to re-argue the findings of fact made by the courts below. As this Court has held on many occasions, "a court

of law, such as this Court is, rather than a court for correction of errors in fact finding, cannot undertake to review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional show of error." Graver Mfg. Co. v. Linde Co., 336 U.S. 271, 275 (1948). This argument is also without merit.

CONCLUSION

More than six years have passed since this action was filed. The Raiders have been known as the Los Angeles Raiders for the last four seasons and have played their home games in this respondent's coliseum, the Los Angeles Memorial Coliseum, for

that period. This case has created an unnecessary cloud of uncertainty for the Los Angeles Memorial Coliseum Commission as well as for the Raiders and should be brought to an end by denial of the petition. The case was decided consistent with the applicable precedent of this Court and presents only the "parochial" concerns of the petitioner. It will not, contrary to the urging of the petitioner (Pet., pp. 6-7), effect the exercise of the power of eminent domain by local governments, including the two largest public entities in the State of California, the City of Los Angeles and the County of Los Angeles, whose counsel are representing this

respondent. Accordingly, there is no ground under Rule 17 of the Rules of the Supreme Court to grant the petition, which should therefore be denied.

Respectfully submitted,

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